

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/674,926
Applicant : Claus Michael Olsen, et al.
Filed : September 30, 2003
TC/A.U. : 2187
Examiner : Bradley, Matthew A.
Docket No. : YOR92003005US1
For : Apparatus for Reducing Accesses to Levels of a Storage Hierarchy in a Computing System

REPLY TO EXAMINER'S ANSWER

This is a Reply to the Examiner's Answer of September 18, 2009.

At page 12 of the Examiner's Answer, the Examiner contends that Appellant mischaracterized the rejection by arguing that the Examiner relied on Rudelic for teaching the claim limitation of a processor as claimed. This argument is incorrect. Appellant did not mischaracterize the Examiner's rejection. Therefore, the rejection is reproduced herein:

“As per independent claim 21, Rudelic teach,

...

a processor configured for writing information to the second level of storage based on energy-conserving criteria and excluding only minimally used portions of information (Processor as shown in Figure 1 item 20 and as taught in Paragraph 0017 and further in paragraph 0046).

...

Rudelic is silent however on, wherein said system state information is selected from a type of energy source powering the system.

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Mirov teach, wherein said system state information is selected from a type of energy source powering the system (Figure 18 as taught in Column 21 lines 19-57: taught as the level of power which anticipates the energy source)."

Rudelic teaches a conventional processor (20) that does not teach or suggest "writing information to a second level of storage based on" ... "a type of energy source powering the system." This is clearly conceded by the Examiner as quoted above. Therefore, the Examiner refers to Mirov for this deficiency. However, Mirov does not teach the claim element at issue whether viewed individually or in combination with Rudelic. In fact, Mirov teaches the opposite of what is claimed. Thus, Mirov states: "a system is provided in which a power supply 1800 is selectively controllable to provide varying levels of current or power." See Paragraph 21.

In other words, Mirov does not suggest saving energy by storing information in a lower energy consuming level of memory based on the type of energy source powering the system. The prior art must be considered as a whole, including parts that would lead away from the claimed invention. *EWP Corp. v. Reliance Universal, Inc.*, 755 F.2d 898, 225 USPQ 20 (Fed. Cir.), *cert. denied*, 474 U.S. 843 (1985). When considered as a whole, Mirov does not teach or suggest modifying Rudelic as the Examiner argues. In fact, Mirov teaches away from the claimed concept. Even if one were to combine the teachings of Rudelic and Mirov, such a combination would result in a storage system wherein the level of the power supply may be varied. Such a system would save power consumption by reducing the output of the energy source and not by writing information to memory based upon the type of energy source powering the system, as claimed.

In the Examiner's Answer, the Examiner disagrees with a statement made by Appellant in the Appeal Brief: "The Examiner concedes that Thelander does not teach or suggest the limitations of claim 27 but alleges that Thelander does teach the limitations." The quoted sentence was clearly made in error but under a well-intended reading of the quoted language in light of the

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rejection the meaning would be clear. A brief review of the rejection reveals that the intended argument was: “The Examiner concedes that **Rudelic and Mirov** do not teach or suggest the limitations of claim 27 but alleges that Thelander does teach the limitations.”

CONCLUSION

For the foregoing reasons, Applicant respectfully requests reversal of the Final rejection and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

/Michael J. Buchenhorner/

Michael J. Buchenhorner

Reg. No. 33,162

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